

STATE OF MICHIGAN
COURT OF APPEALS

In re S. D. JOHNSON-KORR, Minor.

UNPUBLISHED
September 22, 2015

No. 325578
Livingston Circuit Court
Family Division
LC No. 13-014515-NA

Before: K. F. KELLY, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her son pursuant to MCL 712A.19b(3)(c)(i) (failure to rectify the conditions leading to adjudication), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

On July 4, 2013, respondent called for medical assistance after overdosing on rubbing alcohol. When EMS arrived, respondent was tasered and restrained en route to the hospital. She was admitted to the psychiatric ward of the hospital. On July 10, 2013, a petition was filed seeking jurisdiction over respondent's son and his removal from respondent's care. The petition alleged that respondent had issues with mental health, substance abuse, domestic violence, and with providing proper care and custody for her son. On August 30, 2013, respondent pleaded to jurisdiction. Her caseworker, Jessica Belanger, testified that the barriers to reunification were substance abuse, emotional stability, parenting skills, housing, and a failure to find and maintain a legal source of income. A case services plan was developed to address the barriers. However, on July 7, 2014, petitioner filed a supplemental petition seeking termination of respondent's parental rights. Petitioner alleged that respondent had failed to substantially comply with the case services plan and that the barriers to reunification still existed. The trial court subsequently found that there were grounds to terminate respondent's parental rights and that it was in the child's best interests for respondent's parental rights to be terminated.

II. ANALYSIS

Respondent raises three issues on appeal. First, she argues that the Department of Health and Human Services (DHHS) failed to provide reasonable reunification efforts. She also argues that the trial court clearly erred in finding by clear and convincing evidence that there were grounds to terminate, and in finding that termination of her parental rights was in the child's best

interests. All three issues are preserved because they were raised before and addressed or decided by the trial court. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012); *Polkton Charter Twp v Pellegrum*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

We review for clear error a trial court's finding that a statutory ground for termination was proven by clear and convincing evidence. MCR 3.977(K); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). We also review for clear error a trial court's finding that termination of a parent's parental rights is in a child's best interests. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App at 296-297.

A. REUNIFICATION EFFORTS

"Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). Although DHHS "has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App at 248.

In this case, petitioner created a case services plan to address respondent's barriers. Respondent was provided with substance abuse assessments, psychiatric assessments, random drug screens, bus passes, and supervised parenting time. She was also provided information about Community Mental Health (CMH), which she opted to ignore in favor of setting up counseling at the Women's Center, despite a delay, after her insurance lapsed and she was unable to continue counseling at Catholic Social Services. Respondent was also provided with information on how to contact Michigan Works. Although she argues that she was already receiving that service through the homeless shelter she was living at, the independent access did not render DHHS's effort inadequate or unreasonable. Further, respondent was provided with information on how to apply for social security disability. Finally, although she asserts that the communication was insufficient, respondent was in phone, email, and face-to-face contact with her caseworker. Notably, her own testimony indicated that she did not communicate important information to her caseworker, such as an update on her housing situation when she moved out of the homeless shelter. Accordingly, respondent's argument that she was not provided with reasonable reunification efforts is without merit.

B. GROUNDS FOR TERMINATION

MCL 712A.19b(3)(c)(i) provides for termination of parental rights if

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Here, initial disposition occurred on September 17, 2013. Termination occurred on December 16, 2014. Thus, about 15 months, well more than 182 days, elapsed between initial disposition and termination. The conditions that led to adjudication were substance abuse, emotional instability, parenting skills issues, housing issues, and a failure to find and maintain a legal source of income.

The testimony established that at the time of termination, respondent lacked suitable housing and had, in fact, lacked suitable housing throughout the duration of the case. During the pendency of this matter respondent primarily lived in a homeless shelter and at a friend's house. Subsequently, she had a single room in a house with a shared common room. By her own testimony, respondent did not believe that the housing would be acceptable for her son. There is nothing on this record to indicate when, if ever, respondent would be able to rectify this condition.

The testimony also established that at the time of termination, respondent lacked a legal source of income. Although she did extensive work on a daily basis to obtain employment, she was unable to secure any type of employment during the 15 months following initial disposition. Further, although respondent started talking about applying for social security disability at the initial dispositional hearing, at the time of termination she was still only in the process of applying. It was not clear where she was in the fact-gathering process and, although she qualified for an expedited decision, it was possible that she would not submit her application in a timely fashion or that her application would be denied. Given the child's young age, there was no assurance that this condition would be remedied within a reasonable time.

The testimony also established that respondent had not fully addressed her emotional stability and substance abuse issues. She received counseling and reportedly received outpatient services but was resistant to any counseling with regard to her substance abuse issues, making it clear that she did not perceive herself as having any issue with substance abuse. However, respondent's family testified that she had a drug and alcohol problem. Further, her sister testified that, on occasion, respondent did not appear fully lucid during parenting time. Respondent also tested positive for alcohol three times, missed substance abuse screens, and continued to use narcotic painkillers even though she knew that she had a dependence on them. Although the medications were prescribed and respondent testified that her doctors said she could not safely be taken off of them, there was testimony that a plan could be developed to safely get her off the narcotics. It is not clear that respondent was earnestly trying to address this dependence. Moreover, there was a multi-month gap in her counseling. Respondent also failed to provide any documentation indicating that she was actually receiving counseling at the time of the termination hearing, and there was no indication that she had benefited from the counseling. Given these facts, the trial court did not clearly err in finding that respondent had not rectified her emotional stability and substance abuse issues.

Next, the testimony established that respondent failed to complete parenting skills classes and that she felt she did not benefit from the sessions completed. Given her admitted failure to

benefit, this condition presumably still exists, and it is likely that it will not be rectified within a reasonable time considering the child's young age.

It is clear that respondent made limited progress during the substantial period that her son was in custody. Given her record, there was no clear error in the trial court's determination that it was unlikely she would be able to rectify the conditions that led to adjudication within a reasonable time considering his young age. Because only one statutory ground must be established by clear and convincing evidence, we need not address whether the trial court clearly erred in finding the other grounds were proved. See *In re HRC*, 286 Mich App at 461. However, we have considered those findings and conclude that the trial court did not err in holding that the grounds for termination set forth in MCL 712A.19b(3)(g) and (j) were also proved by clear and convincing evidence.

C. BEST INTERESTS

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (internal citations omitted).

Respondent failed to make any significant progress toward addressing the barriers to reunification. After 15 months, she still lacked suitable housing and income. She remained dependent on opioids, still tested positive for alcohol, and still denied that she had a problem with substances. Moreover, respondent admitted that she did not benefit from parenting classes. The record indicated that she was physically, emotionally, and financially unable to provide care for the child. The child would have had to wait an indeterminate period to see if respondent would ever be able to provide proper care and custody. The trial court properly found that his need for permanence and stability outweighed the fact that he and respondent loved each other. Notably, the testimony showed that he was thriving in his placement and had all of his physical, emotional, and medical needs met. He was in a stable routine that included swimming classes and preschool. He was receiving treatments for his asthma. On these facts, the trial court did not clearly err in finding that termination of parental rights was in the child's best interests.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Mark J. Cavanagh
/s/ Henry William Saad